

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2000-207-W/S - ORDER NO. 2001-498

MAY 24, 2001

IN RE: Application of Carolina Water Service, Inc.)	ORDER DENYING
for Approval of an Increase in its Rates for)	MOTION
Water for all its Service Areas and Sewer)	
Service for Certain of its Service Areas.)	

This matter comes before the Public Service Commission of South Carolina (Commission) by way of a Motion filed by the Consumer Advocate for the State of South Carolina. On February 27, 2001, Carolina Water Service, Inc. (CWS or the Company) filed an application with the Commission for adjustment of rates and charges for the provision of water and sewer service. Thereafter, on March 29, 2001, the Consumer Advocate for the State of South Carolina filed a Petition to Intervene in the instant proceeding. CWS then filed a Return to the Consumer Advocate's Motion on April 23, 2001, and on April 27, 2001, the Consumer Advocate filed a Reply to CWS's Return to Motion. For the reasons stated below, we deny the Consumer Advocate's Motion.

In its Motion the Consumer Advocate requests that the Commission expand the scope of this Docket to allow for an examination of all the Company's rates, charges, and tariff provisions, and not just those that are mentioned in the Company's application. As a basis for the Motion, the Consumer Advocate states CWS has experienced changes in the character of service it provides in several of its service areas since its last rate case in 1994. According to the Consumer Advocate, many customers who previously received

full water and/or sewer service from the Company are now provided bulk water and/or sewer service from other entities, with the Company providing only distribution or collection services. Therefore, certain water supply wells or sewage treatment facilities may no longer be used and useful in providing service and may require removal from the Company's rate base. The Consumer Advocate also argues that if CWS has no plant in service in a particular area, there is an issue as to whether plant impact fees need to be reduced, eliminated or restructured. Additionally, according to the Consumer Advocate, due to CWS's request to be regulated on rate of return on rate base methodology, all of the Company's rates and charges are open for examination in this proceeding. The Consumer Advocate also states that, to the extent necessary, the Commission treat its Motion to expand the scope of this proceeding as a formal complaint regarding the rates, charges, and tariff provisions not put at issue in the Company's Application.

In its Return to the Motion of the Consumer Advocate, CWS requests that the Commission reject the Consumer Advocate's proposition to expand the scope of the instant proceeding for reasons which are outlined in the Company's Return. According to CWS, the first reason the Commission should reject the Consumer Advocate's Motion is the request recognizes that an examination of all of the Company's rates and charges thereof is not proper in an application for rate relief under S.C. Code Ann. Section 58-9-240 (Supp. 2000). Next, CWS asserts that the Consumer Advocate has failed to cite any statute, regulation, or caselaw for the proposition that the Commission may expand upon the scope of a proceeding for rate relief beyond the parameters set by the public utility's application. Using case law to support its next position, CWS argues the request of the

Consumer Advocate is contrary to binding precedent of the Supreme Court and the precedent of this Commission. CWS also asserts that because the Notice of Filing has been issued in this proceeding without any indication that rates and charges other than those proposed to be changed by CWS should be addressed, the issues raised by the Consumer Advocate's Motion cannot be properly addressed in this docket.

CWS disagrees with the Consumer Advocate's assertion that certain facilities of CWS may need to be removed from the Company's rate base. However, according to the Company's Return, CWS does not question the Commission's authority to review components of the Company's rate base in addressing an application for rate relief seeking rate of return regulatory treatment, as this authority is established as a matter of law. CWS also alleges that the Consumer Advocate attempts to create a correlation between the inclusion or exclusion of plant in rate base and the propriety of some of the Company's specific rates and charges other than those for which adjustment is sought. The Company states in its Return that the Commission should reject this correlation, as the Consumer Advocate has provided no authority to support its proposition.

Moreover, CWS submits that the nature of the Consumer Advocate's request to expand the scope of this proceeding suggests that the Consumer Advocate recognizes the tenuousness of its request. Finally, CWS asserts that the Consumer Advocate has failed to adhere to, at a minimum, the procedural requirements for the filing and service of a complaint under 26 S.C. Code Ann. 103-830 et seq. (1976, as amended).

In the Consumer Advocate's Reply to CWS's Return to Motion, it expounded on the reasons the Commission should expand the scope of this proceeding, or in the

alternative treat the Consumer Advocate's Motion as a formal complaint. First, according to the Consumer Advocate, South Carolina case law and statutes permit the Commission to expand the scope of the proceeding and to rule on changes to rates which are not specifically mentioned in CWS's application. The Consumer Advocate opines that CWS's due process rights are protected if the following occurs: 1) CWS has notice that all rates are subject to a decrease; 2) CWS has notice that tariff provisions are subject to change; and 3) CWS has the opportunity to respond to any evidence presented in support of reductions or tariff changes.

The Consumer Advocate also argues that case law does not preclude the Consumer Advocate from presenting evidence to challenge the appropriateness of an existing rate which the Company does not propose to change. Additionally, the Consumer Advocate argues the Commission has the legal ability to expand the scope of this proceeding. The Consumer Advocate's alternative request for the Commission to treat its Motion as a formal complaint was presented so the Commission could indicate which party bears the burden of pursuing and proving a particular issue. According to the Reply, the alternative request to treat the Motion as a formal complaint does not concede to any impropriety of the primary request in the Motion, nor is it procedurally defective.

Finally, the Consumer Advocate argues that the granting of its Motion will allow the Commission to establish just and reasonable rates with a fair and equitable rate design. The Consumer Advocate must be permitted to conduct discovery on all topics in order to make specific recommendations regarding changes that are not addressed in

CWS's application. Additionally, the Consumer Advocate opposes the Commission creating a separate docket in this matter; the most effective method of reviewing the Company's rates is in a single proceeding, according to him.

We hold that the Consumer Advocate's Motion to expand the scope of this proceeding in this docket should be denied. Staff is instructed to create a new docket to address the subject matter of the Consumer Advocate's Motion. In addressing CWS's pending application, we find that S.C. Code Ann. Section 58-5-240(C) requires this Commission to "rule and issue an Order approving or disapproving the changes in full or in part within six months after the date the schedule is filed." The hearing in the present docket concerning CWS's application is scheduled for July 11, 2001. The Commission Staff and other persons who seek to participate in the expansion of CWS's application must be allotted an ample amount of time to conduct thorough audits and investigations regarding the subject matter of the Consumer Advocate's Motion to expand the scope of this docket. We find that because the hearing in this matter is scheduled for July 11, 2001, the parties will need additional time to adequately address and investigate the expansion of the scope of CWS's application.

Additionally, if the Consumer Advocate's Motion to expand the scope of this proceeding was granted, CWS and the public must receive adequate notice of the scope of the proceeding. S.C. Code Ann. Section 58-5-240(B) states, "After the schedule has been filed, the Commission shall, after notice to the public such as the Commission may prescribe, hold a public hearing concerning the lawfulness or reasonableness of the proposed changes." The Notice of Filing in the present proceeding has already been

drafted and published in newspapers of general circulation. Moreover, the present Notice of Filing does not include all of the Company's rates, charges, and tariff provisions, which would be included in the proposed expansion of the case. The public and every intervenor in a proceeding before this Commission should have sufficient notice about the issues in a case. The Notice of Filing in this docket simply does not address the matters included in the expansion of the scope of CWS's application. Consequently, we do not believe that the Application before us at this time may be expanded in the manner requested by the Consumer Advocate. A separate docket must be established.

IT IS THEREFORE ORDERED:

1. The Consumer Advocate's Motion to expand the scope of the Application in this proceeding is denied.
2. The Commission Staff is instructed to open a new docket to address the Consumer Advocate's Motion.

MAY 24, 2001

PAGE 7

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director
(SEAL)